

who are already provided for by a disability clause. It does not cover the members of the judiciary who are provided for by a judiciary commission. It does not cover the members of the legislature because the legislature has the power to discipline and/or expel its members.

However, there is a hiatus that exists in the constitution. It existed partially in the old Constitution and it exists in the new constitution to a far greater extent. We have provided in the new constitution already for the offices of comptroller, attorney general and state's attorney. It also anticipated there will be additional elective offices. However, in the old Constitution there was provision for the removal of officers:

"Whenever during the recess of the Legislature charges shall be preferred to the Governor against the Comptroller or Treasurer, for incompetency, malfeasance in office, wilful neglect of duty, or misappropriation of the funds of the State, it shall be the duty of the Governor forthwith to notify the party so charged, and fix a day for a hearing of said charges; and if, from the evidence taken, under oath, on said hearing before the Governor, the said allegations shall be sustained, it shall be the duty of the Governor to remove said offending officer, and appoint another in his place, who shall hold the office for the unexpired term of the officer so removed."

That is section 6 of Article VI of the present Constitution.

It also takes care of the attorney general in the following words: Shall be subject to removal for incompetency, wilful neglect of duty or misdemeanor in office on conviction in a court of law."

It takes care of the removal of the state's attorneys for incompetency. The attorney general was in section 1 of the old Constitution, Article V, and in section 7 of the old Constitution.

The state's attorneys were dealt with as follows:

"There shall be an Attorney for the State in each county, and the City of Baltimore, to be styled 'The State's Attorney,' who shall be elected by the voters thereof, respectively, on the Tuesday next after the first Monday of November, in the year, nineteen hundred and fifty-eight, and on the same day every fourth year thereafter; and shall hold his office for four years from the first Monday in

January next ensuing his election, and until his successor shall be elected and qualified; and shall be re-eligible thereto, and be subject to removal therefrom, for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a Court of Law, or by a vote of two-thirds of the Senate, on the recommendation of the Attorney-General."

Also there is a provision in the old Constitution which does not exist in the new constitution for the removal of a civil officer. It says " — and may remove for incompetency, or misconduct, all civil officers who received appointment from the executive for a term of years."

Now, a few weeks ago I circulated a memorandum concerning this amendment which I am offering:

"If the organic law of a government is silent as to the mode of removal of an official, the official must be deposed as provided by a fundamental law. Where the constitution provides a mode for removal of officers, that mode is exclusive. Ordinarily the legislature cannot provide for the removal of officers protected by the constitution" — which in this case means that the legislature could not provide for the removal of the comptroller or attorney general since they are provided in the Constitution.

"Statutes providing for the removal of an officer are strictly construed.

"The power to remove a public officer is an incident of the sovereign power. The power of removal in England, at common law, resided with the King. In the United States the power rests with the people. They may bestow this power on the executive or the legislature or the judiciary.

"The Governor has no inherent power to remove an official. " — as governors have found out to their sorrow, particularly in the days before they had a judicial disability commission. — "However, the power to appoint carries with it, as an incident, the power to remove if no definite term is fixed."

So there is an implied power that the governor can remove an official that he appoints. However, when a definite term of office is fixed, the power to appoint does not carry with it as an incident of the power of appointment the power to remove. Now, when the constitution provides that an officer may be removed at the pleasure of the appointing officer, the officer must